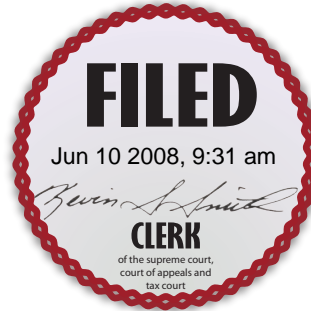


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

MATTHEW ERIC WRINKLES
Michigan City, Indiana

ATTORNEYS FOR APPELLEES:

STEVE CARTER
Attorney General of Indiana

ELIZABETH ROGERS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MATTHEW ERIC WRINKLES,)
)
Appellant,)
)
vs.)
)
DEPARTMENT OF CORRECTION,)
)
Appellee.)

No. 46A04-0706-CV-348

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable William J. Boklund, Judge
Cause No. 46D04-0608-SC-2055

June 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Matthew Eric Wrinkles appeals the trial court's order granting summary judgment in favor of the Indiana Department of Correction (IDOC).

We affirm.

Wrinkles is an inmate assigned to the Indiana State Prison's (ISP) X-row unit.¹ In February 2003, Wrinkles was moved to the maximum control complex (MCC) at the Westville Correctional Facility in Westville, Indiana while X-row was being renovated. Because of property restrictions at the MCC, a majority of Wrinkles's personal items were put into storage at the ISP. In April 2004, while still housed at the MCC, Wrinkles requested that some of his personal property be sent to him from the ISP, including legal materials related to criminal and civil cases he had filed. Over the course of the next several months, Wrinkles made thirteen requests to have his personal property sent to him at the MCC.

In June of 2004, Wrinkles received several boxes of his property. Wrinkles claimed, however, that he did not receive certain legal materials he had requested. In October 2004, Wrinkles was informed that some of his personal property was lost or unaccounted for. Wrinkles was returned to the ISP's X-row in April 2005 and the remainder of his personal property was returned to him. Wrinkles noted that "at least one property box of paperwork, legal materials, as well as a blanket, ear-buds and some other sundry items were missing." *Appellant's Brief* at 4.

¹ Wrinkles is a death row inmate. See *Wrinkles v. State*, 690 N.E.2d 1156 (Ind. 1997); 749 N.E.2d 1179 (Ind. 2001); 776 N.E.2d 905 (Ind. 2002). Death row is commonly referred to as "X-row".

On May 12, 2005, Wrinkles initiated the prisoner grievance process by filing a Step 1 grievance complaint claiming the “loss/theft” of two gray plastic storage bins containing legal papers; one white, cotton blanket; one pair of Koss ear buds; and other sundry items. *Appendix* at 24. Officials responded on June 3, 2005 that none of the property was in the property room. On June 6, 2005, Wrinkles filed a Step 2 grievance, again complaining about his missing property. On June 20, 2005, officials responded by indicating that all of Wrinkles’s property had been sent from MCC to ISP and given to Wrinkles. Four days later, Wrinkles filed a Step 3 grievance complaining about his missing property. Officials responded on July 18, 2005 and informed Wrinkles that an inventory sheet indicated that a blanket had been “stored” as “not allowed” and that “[a]ssorted boxed legal material & sundries were found inventoried” and the inventory was signed by Wrinkles. *Id.* at 27. The response also informed Wrinkles that the ear buds were not inventoried and that he would have to show proof of ownership to pursue their loss. On July 25, 2005, Wrinkles filed a Step 4 grievance again alleging loss of personal property. The response by officials informed Wrinkles that if he believed IDOC staff was responsible for the loss of his personal property, he should file a tort claim as ISP could not pay for the alleged lost property. On August 31, 2005, Wrinkles filed a Step 5 grievance complaint, i.e., an appeal to the regional director, setting forth the same allegations in the Steps 1 through 4 grievances. The regional director denied Wrinkles’s appeal on October 17, 2005. On December 20, 2005, Wrinkles filed his “Notice of Loss of Property – Tort Claim”. *Id.* at 16. The IDOC acknowledged receipt of Wrinkles’s tort claim on February 23, 2006 and denied the claim on August 2, 2006.

On August 28, 2006, Wrinkles filed a small claims complaint in the LaPorte County Superior Court No. 4 against the IDOC.² The IDOC responded with a general denial to Wrinkles's complaint on November 9, 2006. On February 7, 2007, the IDOC filed a motion for continuance and a motion for summary judgment. The same day, the court granted the motion for continuance. Wrinkles filed a motion to amend his pleadings, which the trial court granted on February 27, 2007. Wrinkles then filed a motion in opposition to the IDOC's motion for summary judgment. On April 10, 2007, the court held a hearing on the IDOC's motion for summary judgment. On May 29, 2007, the court granted the IDOC's motion for summary judgment. Wrinkles filed the instant appeal on June 20, 2007.

In support of its motion for summary judgment, the State argued that Wrinkles failed to timely file a notice of tort claim as required by Ind. Code Ann. § 34-13-3-7 (West, PREMISE through 2007 1st Regular Sess.), which provides in relevant part:

(a) An offender must file an administrative claim with the department of correction to recover compensation for the loss of the offender's personal property alleged to have occurred during the offender's confinement as a result of an act or omission of the department or any of its agents, former officers, employees, or contractors. A claim must be filed within one hundred eighty (180) days after the date of the alleged loss.

The State maintains that Wrinkles's complaint alleged conversion of his personal property and that such conversion claim accrued as early as October 2004 when Wrinkles was notified that some of his personal property could not be found. The State thus argues

² Wrinkles did not include a copy of his complaint in his appendix. The court's order on summary judgment indicates that in his complaint, Wrinkles valued the loss of his personal property at \$150 and also sought \$150 in punitive damages.

that Wrinkles's notice of tort claim, filed December 20, 2005, was untimely as it was not filed within 180 days of the alleged loss as required by I.C. § 34-13-3-7(a). The trial court agreed and therefore granted the State's motion for summary judgment.

As a threshold issue, Wrinkles argues that the IDOC was foreclosed from asserting the notice provision of the Tort Claims Act, I.C. § 34-13-3-7(a), as a defense to the action because the IDOC failed to plead such defense in its responsive pleading, choosing instead to file only a general denial to Wrinkles's complaint. Wrinkles is correct that the IDOC filed a general denial and that under the trial rules, a party seeking the benefit of an affirmative defense must raise and specifically plead that defense in a responsive pleading or it is waived. Ind. Trial Rule 8(C); *Willis v. Westerfield*, 839 N.E.2d 1179 (Ind. 2006). Wrinkles, however, filed his complaint in small claims court. Ind. Small Claims Rule 4(A) states: "All defenses shall be deemed at issue without responsive pleadings, but this provision shall not alter the burden of proof." As our Supreme Court has indicated, the trial rules govern small claims proceedings to the extent they do not conflict with the Small Claims Rules. *Niksich v. Cotton*, 810 N.E.2d 1003 (Ind. 2004). Where there is a conflict, the Small Claims Rules apply. *Id.* Thus, with regard to the filing of affirmative defenses in a responsive pleading, S.C.R. 4(A) controls. Under that rule, the IDOC was not required to raise its affirmative defense in its responsive pleading. *See Lowry v. Lanning*, 712 N.E.2d 1000 (Ind. Ct. App. 1999) (noting that in a small claims action defendant did not waive defenses of the statute of limitation or the doctrine of laches by failing to raise such defenses before trial). The IDOC could therefore properly file a motion for summary judgment arguing for the first time that Wrinkles

failed to timely file his notice of tort claim and, as such, he should take nothing by way of his complaint.

Wrinkles also argues on the merits that the trial court erred in granting summary judgment in favor of the IDOC. We note that the trial court's decision on summary judgment "enters appellate review clothed with a presumption of validity." *Malone v. Basey*, 770 N.E.2d 846, 850 (Ind. Ct. App. 2002), *trans. denied*. Nevertheless, it remains that summary judgment is appropriate only when there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C).

On review of a trial court's decision to grant or deny a motion for summary judgment, we apply the same standard as the trial court: we must decide whether there is a genuine issue of material fact that precludes summary judgment and whether the moving party is entitled to judgment as a matter of law. *Carie v. PSI Energy, Inc.*, 715 N.E.2d 853 (Ind. 1999). Once the moving party has sustained its initial burden of proving the absence of a genuine issue of material fact and the appropriateness of judgment as a matter of law, the party opposing summary judgment must respond by designating specific facts establishing a genuine issue for trial. *Stephenson v. Ledbetter*, 596 N.E.2d 1369 (Ind. 1992).

We may consider only those portions of the pleadings, depositions, and any other matters specifically designated to the trial court by the parties for purposes of the motion for summary judgment. Ind. Trial Rule 56(C) & (H). Any doubt as to the existence of an issue of material fact, or an inference to be drawn from the facts, must be resolved in

favor of the nonmoving party. *Cowe v. Forum Group, Inc.*, 575 N.E.2d 630 (Ind. 1991). Although the nonmovant has the burden of demonstrating that the grant of summary judgment was erroneous, we carefully assess the trial court's decision to ensure that the nonmovant was not improperly denied his or her day in court. *Colonial Penn Ins. Co. v. Guzorek*, 690 N.E.2d 664 (Ind. 1997).

Here, the trial court entered findings of fact and conclusions of law. Specific findings and conclusions by the trial court are not required; and, although they offer valuable insight into the trial court's rationale for the judgment as well as facilitate our review, we are not limited to reviewing the trial court's reasons for granting or denying summary judgment. *Bernstein v. Glavin*, 725 N.E.2d 455 (Ind. Ct. App. 2000), *trans. denied*. Rather, a grant of summary judgment may be affirmed upon any theory supported by the designated materials. *Id.*

The State asserts that Wrinkles's property loss occurred in October 2004 when he was informed that his property had been lost or was unaccounted for. Wrinkles states in his brief that his "property loss occurred, or was realized on May 12, 2005". *Appellant's Brief* at 11. Even assuming that May 12, 2005 was the date of the alleged loss, Wrinkles's notice of tort claim was filed beyond the 180-day time limit set forth in I.C. § 34-13-3-7. Wrinkles does not deny this.

Wrinkles argues, however, that the delay in filing his notice was occasioned by the fact that he was following IDOC policy in place at the time. Wrinkles maintains that IDOC policy required him to exhaust the grievance process before he could file his notice of tort claim. He also claims that the IDOC policy did not require him to use the tort

claim process to the exclusion of the grievance process for losses of personal property. Essentially, Wrinkles claims that his participation in the grievance process tolled the limitation period for filing his notice of tort claim. Indeed, Wrinkles argues that he could have timely filed his notice of tort claim if the IDOC had followed the specified timelines for the grievance process. Wrinkles also argues that he substantially complied with the notice requirement because the delay in filing his notice of tort claim was a result of the delay in completing the grievance process which he claims was through no fault of his own.³

Wrinkles's arguments are without merit. First, Wrinkles cites to no authority that suggests that his efforts to exhaust the grievance process tolled the limitation period, nor has he directed us to an IDOC policy that requires exhaustion of the grievance process prior to the filing of a notice of tort claim. The statute is clear, an offender who seeks to recover compensation for the loss of his personal property must file a notice of tort claim within 180 days after the date of the alleged loss. Wrinkles admits that he failed to comply with the notice provision.

Moreover, the IDOC attached to its motion for summary judgment a copy of IDOC policy:

³ Wrinkles also argues that the doctrine of exhaustion of administrative remedies precluded him from filing a notice of tort claim prior to his completion of the grievance procedure. Wrinkles's argument is based upon his belief that a notice of tort claim initiates a court action. It does not. The purpose of the notice requirement is to inform the appropriate state officials of an offender's intent to assert a tort claim so that the state may investigate, determine its possible liability, and prepare a defense to the claim. *See Irwin Mortgage Corp. v. Marion County Treasurer*, 816 N.E.2d 439 (Ind. Ct. App. 2004). The notice is not a request for judicial relief. Even after filing a timely notice of tort claim, the complaining party would still have to file a complaint within the applicable statute of limitation for the tort alleged to obtain judicial relief.

SECTION V: GRIEVANCES

An offender may challenge any action relevant to property or the disposition of any property through the Offender Grievance Procedures as found in Policy 00-02-301, “The Offender Grievance Process.”

In those cases where an offender alleges that personal property was lost due to inappropriate actions by staff of the department and the offender is seeking compensation for the loss, the offender shall use the department’s administrative Tort Claim process rather than the Offender Grievance Process.

Appendix at 15. Wrinkles argues that the this provision did not go into effect until December 2005. We note, however, that in July 2005, in response to Wrinkles’s Step 3 grievance, officials informed Wrinkles that he could file a tort claim if he believed IDOC staff was responsible for the loss of his property. This strongly suggests that, even if the above policy was not in effect, the IDOC policy in effect at the time did not require exhaustion of the grievance process prior to the filing of the notice of tort claim.

Wrinkles has failed to demonstrate that IDOC policy required him to exhaust the grievance process prior to filing his notice of tort claim. To the contrary, IDOC policy permits the filing of a notice of tort claim prior to completion of the grievance process. Wrinkles acknowledges that he could have filed his notice of tort claim within the 180-day time limit, but that he did not. Despite his many arguments, Wrinkles has failed to establish that his efforts to exhaust the grievance process tolled the limitation period for filing a notice of tort claim. Wrinkles filing of his notice of tort claim was untimely. We therefore conclude that the court properly granted summary judgment in favor of the IDOC.

Judgment affirmed.

KIRSCH, J. and BAILEY, J., concur.